IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3243 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAVANJI BHIKHAJI SOLANKI (RAJPUT) - Petitioner(s)
Versus
VALJIBHAI HIRABHAI CHAUDHARY & 4 - Respondent(s)

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Appearance :
MR MEHUL H RATHOD for Petitioner(s) : 1,
MR NK MAJMUDAR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.
MR DASHRATH CHAUHAN, AGP for Respondent(s) : 3 - 4.
DS AFF.NOT FILED (R) for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 02/08/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This petition under Articles 226 and 227 of the Constitution challenges the order dated 20.01.2007 passed by the Election Tribunal i.e. Principal Senior Civil Judge, Palanpur at Banaskantha below application Exh.20 in Election Petition No.1 of 2006 by which the Election Tribunal had appointed the Court Commissioner for recounting the votes cast at the election of Sarpanch of Vesa Gram Panchayat in Banaskantha District.

2. The elections at Vesa Gram Panchayat were held on 10.12.2006. The petitioner herein as well as respondent No.1 contested for the office of Sarpanch. As per the results declared on 12.12.2006, the petitioner was declared elected by majority of one vote. Respondent No.1 applied for recounting of the votes before the Returning Officer. The Returning Officer rejected his application. On 14.12.2006, respondent No.1 herein presented Election Petition before the Principal Civil Judge, Banaskantha at Palanpur. Respondent No.1 also presented application Exh.5 for appointing Court Commissioner for bringing the ballot boxes before the Election Tribunal. On that application, the Tribunal passed an order appointing the Court Commissioner to bring the boxes before the Tribunal on 16.12.2006. Respondent No.1 filed a further application at Exh.20 for a direction to the Court Commissioner to open the seals on the ballot boxes and recounting the votes. That application came to be allowed by the Election Tribunal. At the

instance of the petitioner, the Tribunal stayed operation of that order for a period of 15 days. The petitioner, thereafter, moved this Court and this Court while admitting the petition on 05.02.2007, granted interim order staying operation of the impugned order dated 20.01.2007.

We have taken up the petition for final disposal today.

3. In the facts and circumstances of the case, we are of the view that the Election Petitioner has to make out a case for recounting of votes and that such a prayer for recounting could not have been granted merely for the asking. There are several decisions of the Apex Court laying down the principles when an order for recounting would be warranted and justified. Hence, evidence would have to be led by the parties before the Court can arrive at a conclusion that the order for recounting would be warranted and justified.

4. We are, therefore, of the view that the Election Petition which is still pending before the Tribunal should be taken up and after the parties lead evidence and make their submissions, the Tribunal will consider the matter in accordance with law. It is only after the evidence is led and arguments are submitted before the Election Tribunal that thereafter the Tribunal will consider the question whether any direction for recounting should be given or

not.

5. In view of the above discussion, we set aside the impugned order dated 20.01.2007 and we also direct that the order dated 14.12.2006 passed by the Election Tribunal for bringing the ballot boxes to the Court shall remain in abeyance with the result that the ballot boxes shall remain in custody of the appropriate authority, but such authority shall keep the ballot boxes in sealed condition and preserve them properly till the final disposal of the Election Petition and for a period of one month thereafter and that no further order shall be passed on Exh.5 and that the matter shall be finally heard and decided.

6. The Election Tribunal shall hear and decide the Election Petition as expeditiously as possible and preferably within two months from the date of receipt of writ of this Court.

7. The petition is accordingly disposed of in the above terms.

Rule is made absolute to the above extent.

[M.S.SHAH, J.]

[K.A.PUJ, J.]

mrpandya*